



Federal Communications Commission
Washington, D.C. 20554

December 21, 2016

DA 16-1429

Steve B. Sharkey
T-Mobile License LLC
601 Pennsylvania Ave., NW
Suite 800
Washington, DC 20004

RE: Request for Waiver of Section 27.14(g)(1), WT Docket No. 16-319

Dear Mr. Sharkey:

For the reasons stated below, the Mobility Division of the Wireless Telecommunications Bureau (Bureau) hereby grants T-Mobile License LLC (T-Mobile) a conditional waiver of Section 27.14(g)(1) of the Commission's rules,¹ which would otherwise accelerate—by two years, to June 13, 2017—the end of license term and related construction requirements for three 700 MHz licenses.² As explained below, we find that a waiver grant will serve the public interest by enabling T-Mobile to rapidly bring new and advanced wireless services to the citizens of Montana and Wyoming, many of whom reside in remote areas where the entry of a new wireless carrier will increase competition and consumer choice.

Background. In the *700 MHz Second Report and Order*, the Commission adopted interim and end of license term construction benchmarks for certain 700 MHz band licensees.³ The Commission required Lower 700 MHz band A and B Block licensees to provide signal coverage and offer service over at least 35 percent of their license area by June 13, 2013,⁴ later extended to December 13, 2016⁵ (Interim Construction Requirement), and to provide signal coverage and offer service over at least 70 percent of that area by the end of their initial 10-year license term, here June 13, 2019 (Final Construction Requirement).⁶ Section 27.14(g)(1) provides that if a licensee does not satisfy the Interim Construction Requirement, its license term will be reduced by two years, thereby requiring it to meet the Final Construction Requirement two years sooner.⁷ Further, if a licensee does not meet its Final Construction

¹ 47 CFR § 27.14(g)(1).

² Waiver Request, Universal Licensing System (ULS) File Nos. 0007491235 (WQJQ805), 0007491238 (WQJQ806), and 0007491243 (WQJQ807) (filed Oct. 5, 2016). *See also* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, File Nos. 0007491235, 0007491238, and 0007491243 (filed Oct. 6, 2016) (Commitment Letter); *Ex Parte* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Nov. 30, 2016) (T-Mobile *Ex Parte*). The Bureau consented to the assignment of the licenses to T-Mobile on December 5, 2016. *See Wireless Telecommunications Bureau Market-Based Applications Action*, Public Notice, Report Number 11907 (WTB 2016).

³ *See Service Rules for 698-746, 747-762, and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

⁴ *See* 47 CFR § 27.14(g).

⁵ *See Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122, 15151-52, para. 64 (2013).

⁶ *See* 47 CFR § 27.14(g); *See 700 MHz Second Report and Order*, 22 FCC Rcd at 15293-94, 15349, paras. 6, 157.

⁷ *Id.* at 27.14(g)(1).

Requirement, it will be subject to a “keep-what-you-serve” rule, whereby its “authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission.”⁸

T-Mobile seeks a waiver of Section 27.14(g)(1) to provide additional time to meet the construction requirements for three licenses (the Licenses, and each individually, a License):

- Eastern License WQJQ805 (Basic Economic Area (BEA) 144 - Billings, MT-WY), a Lower 700 MHz A Block license that covers portions of eastern and southern Montana and northern Wyoming;
- Eastern License WQJQ806 (BEA 145 - Great Falls, MT), a Lower 700 MHz A Block license that is geographically adjacent to WQJQ805 and covers northcentral Montana; and
- Western License WQJQ807 (Cellular Market Area (CMA) 527 - Montana 5 - Mineral), a Lower 700 MHz B Block license in western Montana.⁹

In its Waiver Request, T-Mobile proposes alternative construction benchmarks and related commitments, leading to 70 percent geographic coverage in each License area prior to the June 13, 2019, Final Construction Requirement. The Waiver Request went on public notice for comment on October 6, 2016.¹⁰ Five parties filed comments; one, the Rural Wireless Association, Inc. (RWA), opposes the request.¹¹ Montana Governor Steve Bullock, Montana State Representative Daniel Zolnikov, Montana State Senator Doug Kary, and INCOMPAS (a trade association for competitive networks and competition policy formerly called COMPTel) each support the Waiver Request, emphasizing that T-Mobile’s new competitive wireless services would bring public interest benefits to the citizens of Montana and Wyoming, particularly those in rural and Tribal areas.¹²

On November 30, 2016, T-Mobile offered an updated set of reporting and implementation commitments. T-Mobile now commits to:¹³

- Within four months of waiver grant, meet the Interim Construction Requirement for the Western License area (35 percent geographic signal coverage and service).

⁸ 47 CFR § 27.14(g)(2). *See also* 700 MHz *Second Report and Order*, 22 FCC Rcd at 15348, 15349, para. 153.

⁹ T-Mobile currently holds a Lower 700 MHz A Block BEA license – WQIZ473 (BEA 146 - Missoula, MT) – that fully encompasses the area covered by WQJQ807.

¹⁰ *See* Wireless Telecommunications Bureau Seeks Comment on Request for Waiver of Accelerated Final Construction Deadline for Three 700 MHz Licenses in Montana, *Public Notice*, 31 FCC Rcd 11043 (WTB 2016).

¹¹ *See* Rural Wireless Association Comments (RWA Comments); *Ex Parte* Letter from Caressa D. Bennet, General Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Nov. 16, 2016) (RWA November *Ex Parte*); *Ex Parte* Letter from Caressa D. Bennet, General Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Dec. 12, 2016) (RWA December *Ex Parte*).

¹² *See* Montana Governor Steve Bullock Reply Comments (Governor Bullock Reply); Montana State Representative Daniel Zolnikov Reply Comments; Montana State Senator Doug Kary Reply Comments; INCOMPAS Reply Comments. T-Mobile also filed Reply Comments (T-Mobile Reply), including a letter in support of the Waiver Request from U.S. Senators Steve Daines and John Tester to Chairman Tom Wheeler, FCC (dated Oct. 6, 2016) (Senators Daines and Tester Letter). T-Mobile Reply Ex. A, clarified by T-Mobile *Ex Parte* at 2, n.7.

¹³ *See* T-Mobile *Ex Parte* at 4-5. *See also* Waiver Request at 2; Commitment Letter at 1-2.

- Within seven months of waiver grant, file a certification describing in detail the specific actions taken to ensure the below performance requirements can be met for each License.
- Within 13 months of waiver grant, deploy facilities sufficient to cover 40 percent of each Eastern License area.
- Within 25 months of waiver grant, meet the Final Construction Deadline for each Eastern License area.
- Within 30 months of waiver grant, meet the Final Construction Deadline for the Western License area (by June 13, 2019).

T-Mobile also committed to establishing new retail sites in the Eastern License areas by the end of 2018;¹⁴ maintaining 70 percent coverage in each License area for five years, subject to limited exceptions;¹⁵ and making good faith efforts to deploy service to the Fort Peck Indian Reservation.¹⁶

Discussion. The Commission may grant a request for a waiver when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁷

We have carefully reviewed the record before us and find that the underlying purpose of Section 27.14(g)(1)—“to better promote access to spectrum and the provision of service, *especially in rural areas*”¹⁸— would be frustrated by application of the rule here and that grant of the requested waiver, subject to the performance and related conditions below, will serve the public interest. All counties in the License areas are rural as defined by the Commission.¹⁹ Consistent with Section 309 of the Act’s directive to promote the deployment of wireless services to rural communities,²⁰ we find that a carefully conditioned waiver of Section 27.14(g)(1) will serve the public interest by enabling, and indeed committing, T-Mobile to quickly bring new wireless services to remote areas of Montana and Wyoming, including Tribal areas that may otherwise continue to be underserved.

T-Mobile states that a limited waiver of Section 27.14(g)(1) would enable it to “use the Licenses to bring more robust mobile voice and data services to sparsely populated areas of Montana and Wyoming,” increasing consumer choice.²¹ T-Mobile argues that the especially rural nature of the License

¹⁴ See T-Mobile *Ex Parte* at 5. See also Waiver Request at 2, 17-18; Commitment Letter at 2.

¹⁵ See T-Mobile *Ex Parte* at 5.

¹⁶ See *id.*

¹⁷ 47 C.F.R. § 1.925(b)(3).

¹⁸ 700 MHz *Second Report and Order*, 22 FCC Rcd at 15348, para. 153 (emphasis added).

¹⁹ The Commission defines a “rural” county as one with a population density of 100 persons per square mile or less, based upon the most recently available Census data. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19087, para. 11 (WTB 2004) (*Rural Report and Order*).

²⁰ Section 309(j) directs the Commission to, among other things, ensure “the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas.” 47 U.S.C. § 309(j)(3).

²¹ Waiver Request at 14-15.

areas, the lack of siting and backhaul facilities in the two Eastern License areas, and the difficult geographic and weather conditions in Montana and Wyoming constitute unique circumstances favoring the requested waiver relief.²² T-Mobile has committed to immediately take steps to deploy service,²³ and states that, as it already provides service in certain parts of Montana, the waiver would permit it to expand service throughout much of the state, increasing consumer choice.²⁴

We note that Montana and Wyoming are two of the largest, yet least populated, states in the nation.²⁵ The three Licenses cover more than 119,496 square miles of Montana and more than 16,828 square miles of Wyoming.²⁶ T-Mobile's commitment to serve at least 70 percent of each of the License areas would result in coverage to more than 95,427 square miles, an area the size of Oregon, but with only a small fraction of its population.²⁷

The Commission recently found that more than 39 percent of Americans living in rural areas lack access to advanced telecommunications capability,²⁸ and only 13 percent have more than one choice of providers of these services.²⁹ All 49 counties comprising the three License areas are rural as defined by the Commission (*i.e.*, each has a population density of 100 persons per square mile or less).³⁰ In fact, 39 of the counties have a population density of less than five persons per square mile.³¹ Montana and Wyoming are demonstrably underserved by wireless service providers, ranking among the five states with the least broadband access in the United States.³²

The Commission also has found that lack of telecommunications services is “even more severe for Americans on rural Tribal lands”³³ and that “communities on Tribal lands have historically had less

²² See *id.* at 2, 17-18.

²³ As noted above, the Bureau has consented to the assignment of the Licenses to T-Mobile.

²⁴ See Waiver Request at 15.

²⁵ See Guide to State and Local Census Geography - Selected Data from the 2010 Census, U.S. Census Bureau, http://www.census.gov/geo/reference/guidestloc/select_data.html (2010 State and Local Census Guide).

²⁶ See FCC, Geographic Information Systems Database, <https://www.fcc.gov/general/geographic-information-systems>.

²⁷ Oregon comprises 95,988 square miles. See 2010 State and Local Census Guide.

²⁸ See 2016 Broadband Progress Report, 31 FCC Rcd 699, 701, para 4 (2016) (2016 Broadband Report).

²⁹ See *id.* at 702, para. 6.

³⁰ See *Rural Report and Order*, 19 FCC Rcd at 19087, para. 11; U.S. Census Bureau, 2010 Census of Population and Housing, Population and Housing Unity Counts, Montana: 2010, at 7 (Sept. 2012), <https://www.census.gov/prod/cen2010/cph-2-28.pdf> (2010 Montana Census Data); U.S. Census Bureau, 2010 Census of Population and Housing, Population and Housing Unity Counts, Wyoming: 2010, at 7 (June 2012), <https://www.census.gov/prod/cen2010/cph-2-52.pdf> (2010 Wyoming Census Data).

³¹ See 2010 Montana Census Data at 7; 2010 Wyoming Census Data, at 7.

³² See Waiver Request at 15. See also Nat'l Telecommunications & Info. Admin., U.S. Dep't of Commerce, U.S. Broadband Availability: June 2010 – June 2012, at 12 tbl. 5 (May 2013), http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf. In addition, U.S. Senators Daines and Tester state that “[i]n our home state, the unique geography, low-density population, and extreme weather conditions make it significantly more challenging to provide residents with the communications services most Americans take for granted.” Senators Daines and Tester Letter at 1. See also Governor Bullock Reply (noting that “[t]he unique topography, low-density population and extreme weather conditions in Montana and Wyoming make it hard for companies to provide telecommunications services to [these states'] residents. As a result, there are too few providers in [these] states offering too little on the way of advance telecommunications services”).

³³ 2016 Broadband Report, 31 FCC Rcd at 750, para 121.

access to telecommunications services than any other segment of the population.”³⁴ Indeed, 41 percent of Tribal citizens lack access to advanced telecommunications services.³⁵ This disparity is even more acute in Montana and Wyoming, where 65 percent of Tribal lands in Montana and 48 percent in Wyoming lack access to these services.³⁶ T-Mobile, which currently serves the Montana Flathead Tribal Land, states that grant of the waiver will enable it to cover much of the Rocky Boys, Crow, and Northern Cheyenne Tribal lands, and that it will make good faith efforts to deploy service to the Fort Peck Indian Reservation.³⁷

In addition, T-Mobile cites several cases in support of its Waiver Request.³⁸ T-Mobile notes that in *Pacific Communications*,³⁹ the Bureau extended the construction period to enable the license to be put to “more competitive and efficient use,”⁴⁰ and in *Northstar Technology*,⁴¹ it extended the construction period to enable the introduction of new advanced, competitive wireless services in underserved rural areas.⁴²

RWA, which opposes the relief sought by T-Mobile, claims that the Waiver Request does not meet the requirements for an extension of time to construct a license under Section 1.946(e)(1) of the Commission’s rules.⁴³ RWA further argues that neither *Pacific Communications*⁴⁴ nor *Northstar Technology*⁴⁵ support relief here because, in those cases, the Commission found that circumstances existed beyond each licensee’s control that inhibited timely construction.⁴⁶ We do not act under Section 1.946(e)(1) today, however.

RWA argues that grant of the requested waiver would not serve the public interest, as required by Section 1.925, and claims that if spectrum is returned to the Commission under Section 27.14(g)(2), unspecified RWA members would apply for portions of the returned spectrum and satisfy applicable buildout requirements.⁴⁷ RWA further states that “[t]o the extent that the Commission determines that it needs to consider T-Mobile’s buildout commitments, it needs to carefully scrutinize these commitments and provide for appropriate penalties in the event they are not met.”⁴⁸ We are adopting stringent performance conditions below to ensure that, consistent with the underlying purpose of Section 27.14(g),

³⁴ *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 11794, 11798 (2000); see also FCC, Connecting America: The National Broadband Plan at 152, Box 8-4 (2010), <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

³⁵ *2016 Broadband Report*, 31 FCC Rcd at 701, para 4.

³⁶ See *id.* at 770, Appx. G.

³⁷ Waiver Request at 15; T-Mobile *Ex Parte* at 5.

³⁸ Waiver Request at 12.

³⁹ *Pacific Communications LLC and Coral Wireless, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 15574 (WTB 2004) (*Pacific Communications*).

⁴⁰ T-Mobile *Ex Parte* at 4.

⁴¹ *Northstar Technology, LLC*, Order, 17 FCC Rcd 10908 (WTB 2002) (*Northstar Technology*).

⁴² T-Mobile *Ex Parte* at 3-4.

⁴³ 47 C.F.R. § 1.946(e)(1).

⁴⁴ *Pacific Communications*, 19 FCC Rcd 15574.

⁴⁵ *Northstar Technology*, 17 FCC Rcd 10908.

⁴⁶ See RWA Comments at 3-4; RWA November *Ex Parte* at 2.

⁴⁷ See RWA Comments at 4-5; RWA December *Ex Parte* at 2.

⁴⁸ RWA December *Ex Parte* at 1.

T-Mobile quickly introduces new competitive services in the three rural License areas. We believe that by requiring T-Mobile to serve at least 40 percent of each License area by January 21, 2018, and 70 percent of each area by January 21, 2019, consumers will receive new competitive services expeditiously. If T-Mobile fails to meet the required benchmarks, it will be subject to significant penalties as detailed below.

RWA also argues that geographic and other conditions in Montana and Wyoming do not constitute special circumstances that would justify a waiver under Section 1.925.⁴⁹ While geographic and other conditions in Montana and Wyoming are atypical, we do not base our decision to grant waiver relief on them today. Rather, we believe that absent a waiver, the provision of new competitive wireless services to the three License areas could be delayed, frustrating the underlying purpose of Section 27.14(g)(1)—to promote access to spectrum and the provision of service, especially in rural areas. Relief is warranted under Section 1.925(b)(3) for the public interest benefits described above, including T-Mobile’s commitment to bring service to 70 percent of the License areas sooner than the end-of-license term.

For the reasons stated above, and in view of the entire record before us, we hereby grant T-Mobile a waiver of Section 27.14(g)(1) subject to the conditions enumerated below.⁵⁰

Waiver Conditions. To ensure that the benefits of the waiver relief are promptly realized by the citizens of Montana and Wyoming, we require T-Mobile to satisfy the requirements below as a condition of this waiver. Unless otherwise specified here, if T-Mobile fails to satisfy any condition, the waiver will be invalid and T-Mobile will be subject to the Section 27.14(g)(2) “keep-what-you-serve” rule that would have applied as of June 13, 2017—the end of license term for the three Licenses—absent a waiver of Section 27.14(g)(1).⁵¹

1. *35 Percent Coverage Benchmark.* By April 21, 2017, T-Mobile must provide signal coverage and offer service to at least 35 percent of the geographic area of the Western License area, Call Sign WQJQ807. No later than April 21, 2017, T-Mobile must file a notification of construction for the License demonstrating that it has met the 35 Percent Coverage Benchmark. If T-Mobile fails to meet this benchmark, its authorization will automatically terminate, without Commission action, for those geographic portions of that License in which T-Mobile is not providing service by June 13, 2017, and those unserved areas will become available for reassignment by the Commission.
2. *Construction Progress Report.* By July 21, 2017, T-Mobile must file a sworn statement in WT Docket No. 16-319 describing the specific actions it has taken to ensure that it will be able to satisfy the 40 Percent Coverage Benchmark and 70 Percent Coverage Benchmark described below, and certifying that it expects to be able to meet those benchmarks.
3. *40 Percent Coverage Benchmark.* By January 21, 2018, T-Mobile must provide signal coverage and offer service to at least 40 percent of the geographic area of each License area.⁵² No later than January 21, 2018, T-Mobile must file a notification of construction for each License demonstrating that it has met the 40 Percent Coverage Benchmark. If T-

⁴⁹ See RWA Comments at 6.

⁵⁰ This waiver relief will not automatically transfer if T-Mobile seeks to assign, partition, disaggregate, or lease spectrum under a License to a third party. Rather, the third party must demonstrate that the waiver relief should transfer, and the Bureau may, in its discretion, grant, modify, or reject such relief.

⁵¹ See *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, para. 153; 47 CFR § 27.14(g)(2).

⁵² T-Mobile initially committed to meeting a 40 percent construction benchmark for the Western License, but omitted this commitment in its November 30, 2016 filing. See Waiver Request at 2; T-Mobile *Ex Parte* at 4.

Mobile fails to meet this benchmark for a License, the Commission may take action to terminate those portions of the licensed areas where T-Mobile was not providing service by June 13, 2017 for failure to satisfy the conditions of this waiver *unless* T-Mobile demonstrates (1) that it has made good faith efforts to meet the benchmark but was unable to do so because of circumstances beyond its control; and (2) affirms that it remains on track to meet the 70 Percentage Coverage Benchmark described below.

4. *70 Percent Coverage Benchmark.* By January 21, 2019, T-Mobile must provide signal coverage and offer service to at least 70 percent of the geographic area of each License area.⁵³ No later than January 21, 2019, T-Mobile must file a notification of construction for each License demonstrating that it has met the 70 Percent Coverage Benchmark. If T-Mobile fails to meet this benchmark for a License, its authorization will automatically terminate, without Commission action, for those geographic portions of that License in which T-Mobile was not providing service by June 13, 2017, and those unserved areas will become available for reassignment by the Commission; *except* that if T-Mobile provides signal coverage and offers service to at least 60 percent (but less than 70 percent) of the geographic area of a License area at the 70 Percent Coverage Benchmark, its authorization will terminate only for those geographic portions of that License in which T-Mobile was not providing service by January 21, 2019.
5. *Continuity of Coverage.* From the end-of-license term (June 13, 2019), T-Mobile must maintain at least the level of coverage achieved by the 70 Percent Coverage Benchmark in each License area for a minimum of five years (until June 13, 2024); except, T-Mobile may reduce geographic coverage if necessary to: (1) no less than 60 percent of a License area for up to 180 consecutive days to adjust to consumer demand or for other usual commercial reasons, or (2) less than 60 percent of a License area for up to 180 consecutive days to accommodate unusual circumstances such as a system upgrade or recovery from a natural or manmade catastrophe. If T-Mobile violates this condition for a License area, it must provide written notice to the Commission, and its authorization will automatically terminate, without Commission action, for those geographic portions of that License area in which T-Mobile was not providing service by June 13, 2017, and those areas will become available for reassignment by the Commission.
6. *Fork Peck Reservation Service.* T-Mobile must make good faith efforts to extend service to the Fort Peck Reservation, BEA 144, before the January 21, 2019, 70 Percent Coverage Benchmark, including working with Tribal leaders to identify and secure locations for tower construction or access and backhaul capabilities and to reach agreements facilitating use of those locations. T-Mobile must file a sworn statement in WT Docket No. 16-319 by January 21, 2019, specifying what steps the company has taken to extend service to the Fort Peck Reservation.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b) of the Commission's rules, 47 CFR § 1.925(b), T-Mobile License LLC is hereby GRANTED, TO THE EXTENT PROVIDED ABOVE, a waiver of Section 27.14(g)(1) of the Commission's rules, 47 CFR § 27.14(g)(1).

⁵³ T-Mobile initially committed to meeting a 70 percent construction benchmark for the Western License at the same time as the Eastern Licenses; in its November 30, 2016 filing, T-Mobile committed to meeting a 70 percent construction benchmark for the Western License at the end of its license term, June 13, 2019. *See* Waiver Request at 2; T-Mobile *Ex Parte* at 5.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau